

108TH CONGRESS  
2D SESSION

# H. R. 4129

To provide a clear and unambiguous structure for the jurisdictional and regulatory treatment for the offering or provision of voice-over-Internet-protocol applications, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 2, 2004

Mr. PICKERING introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To provide a clear and unambiguous structure for the jurisdictional and regulatory treatment for the offering or provision of voice-over-Internet-protocol applications, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE; PURPOSE.**

4       (a) SHORT TITLE.—This Act may be referred to as  
5       the “VoIP Regulatory Freedom Act of 2004”.

6       (b) PURPOSE.—The purpose of this Act is to prevent  
7       the imposition of harmful obligations or a patchwork of

1 multiple and discriminatory regulations on the providers  
2 of applications that utilize the Internet protocol or any  
3 successor protocol to offer 2-way or multidirectional voice  
4 communications.

5 **SEC. 2. ASSERTION OF FEDERAL JURISDICTION.**

6 (a) IN GENERAL.—Notwithstanding any other provi-  
7 sion of law, responsibility and authority to regulate the  
8 offering or provision of a voice-over-Internet-protocol ap-  
9 plication is reserved solely to the Federal Government.

10 (b) PROHIBITION OF STATE REGULATION.—No  
11 State or political subdivision thereof may enact or enforce  
12 any law, rule, regulation, standard, or other provision hav-  
13 ing the force or effect of law that regulates, or has the  
14 effect of regulating, the offering or provision of a VoIP  
15 application.

16 (c) PROHIBITION OF DELEGATION TO STATES.—Any  
17 responsibility or authority to regulate the offering or pro-  
18 vision of a VoIP application that, pursuant to subsection  
19 (a), is reserved by the Federal Government may not be  
20 delegated, by any Federal agency or officer, to any State  
21 or political subdivision thereof.

22 **SEC. 3. PREEMPTION OF BROAD FCC AUTHORITY.**

23 Except as specifically provided in this Act and not-  
24 withstanding any other provision of law, the Commission

1 shall not impose any rule or regulation on, or otherwise  
2 regulate, the offering or provision of a VoIP application.

3 **SEC. 4. FCC AUTHORITY REGARDING CONNECTED VOIP AP-**  
4 **PLICATIONS.**

5 (a) INTERPROVIDER COMPENSATION.—

6 (1) RULEMAKING.—Within 180 days after the  
7 date of the enactment of this Act, the Commission  
8 shall complete a proceeding to establish a set of  
9 rules and standards to provide for appropriate ar-  
10 rangements to compensate providers of facilities and  
11 equipment used to transmit communications employ-  
12 ing a connected VoIP application.

13 (2) FACTORS.—In the proceeding the Commis-  
14 sion shall—

15 (A) provide for an appropriate transition  
16 period to allow providers of such facilities and  
17 equipment and providers of connected VoIP ap-  
18 plications to comply with any rules and stand-  
19 ards established; and

20 (B) consider the unique nature and cir-  
21 cumstances relating to the use of such facilities  
22 and equipment in varying geographic markets  
23 and rural areas.

24 (b) UNIVERSAL SERVICE.—Within 180 days after the  
25 date of the enactment of this Act, the Commission shall

1 complete a proceeding to provide a contribution mecha-  
2 nism applicable to connected VoIP applications, which  
3 may include a collection methodology based on the assign-  
4 ment of telephone numbers to end users, other methodolo-  
5 gies, or any combination thereof. In the proceeding, the  
6 Commission shall seek to ensure the preservation, en-  
7 hancement, and long-term sustainability of universal serv-  
8 ice by maximizing participation in the support of universal  
9 service among the greatest number of providers of con-  
10 nected VoIP applications.

11 (c) LAW ENFORCEMENT ACCESS.—

12 (1) REQUIREMENTS REGARDING ASSISTANCE  
13 CAPABILITIES.—Effective as provided in paragraph  
14 (3)(D), each provider of a connected VoIP applica-  
15 tion shall ensure that its equipment, facilities, or  
16 services are capable of—

17 (A) enabling the government to intercept  
18 communications transmitted using such applica-  
19 tion and to access call-identifying information  
20 regarding communications so transmitted, and

21 (B) delivering such intercepted commu-  
22 nications and call-identifying information to the  
23 government,

24 for the same purposes, to a similar extent, and sub-  
25 ject to similar limitations and protections (including

1       protections regarding privacy and security and pro-  
2       tections ensuring access only pursuant to lawful au-  
3       thorization) that, under sections 103 and 105 of the  
4       Communications Assistance for Law Enforcement  
5       Act, are required of the capabilities of the equip-  
6       ment, facilities, or services of a telecommunications  
7       carrier.

8               (2)   DETERMINATION   REGARDING   FEASI-  
9       BILITY.—Not later than 180 days after the date of  
10      the enactment of this Act, and not later than every  
11      180 days thereafter, the Commission shall conduct a  
12      proceeding to determine whether it is technologically  
13      feasible and reasonable to commence applicability of  
14      the assistance capability requirements established  
15      under paragraph (1).

16              (3) EFFECT OF DETERMINATION.—If the Com-  
17      mission, pursuant to a proceeding under paragraph  
18      (2), determines that it is technologically feasible and  
19      reasonable to commence applicability of the assist-  
20      ance capability requirements established under para-  
21      graph (1)—

22                      (A) the requirement under paragraph (2)  
23                      to conduct further semi-annual proceedings  
24                      shall not apply after such determination;

1 (B) not later than 180 days after such de-  
2 termination, the Commission shall establish  
3 rules, technical requirements, and standards  
4 that—

5 (i) implement the requirements under  
6 paragraph (1);

7 (ii) protect the privacy and security of  
8 communications not authorized to be inter-  
9 cepted;

10 (iii) minimize the cost of such compli-  
11 ance on customers or subscribers;

12 (iv) serve the policy of the United  
13 States to encourage the provision of new  
14 technologies and services to the public; and

15 (v) provide a reasonable time and con-  
16 ditions for compliance with and the transi-  
17 tion to any new standard;

18 (C) in establishing such rules, technical re-  
19 quirement, and standards, the Commission con-  
20 sult with providers of connected VoIP applica-  
21 tions, manufacturers of equipment used by such  
22 applications, other appropriate parties providing  
23 services used in such applications, the Attorney  
24 General of the United States, and State and  
25 local law enforcement agencies; and

1 (D) the requirement under paragraph (1)  
2 shall take effect upon the expiration of the 180-  
3 day period beginning upon such determination.

4 **SEC. 5. VOLUNTARY INDUSTRY CONSENSUS PROCESS RE-**  
5 **GARDING OTHER CONNECTED VOIP OBLIGA-**  
6 **TIONS.**

7 (a) VOLUNTARY PROCESS.—The Commission shall  
8 appoint an appropriate representative industry organiza-  
9 tion or organizations which shall, within 180 days after  
10 the date of the enactment of this Act, develop, as applica-  
11 ble, consensus guidelines, protocols, or performance re-  
12 quirements pertaining to the offering or provision of con-  
13 nected VoIP applications for—

14 (1) providing comparable capabilities to 911  
15 and enhanced 911 services;

16 (2) improving use by the disabled community;

17 (3) improving reliability of voice over Internet  
18 protocol applications; and

19 (4) ensuring appropriate security for the appli-  
20 cation and voice communications.

21 (b) INFORMATION TO CUSTOMERS.—A provider of a  
22 connected VoIP application that does not provide for its  
23 customers services that are comparable to 911 service and  
24 enhanced 911 service shall provide a clear and conspicuous  
25 notice of the failure to provide such services to each cus-

1 tomer prior to the offering of the application to that cus-  
2 tomer.

3 (c) TECHNICAL SUPPORT.—The Commission shall  
4 provide technical support, as appropriate, to the organiza-  
5 tion selected pursuant to subsection (a).

6 **SEC. 6. COMMISSION REVIEW.**

7 Beginning in 2005, the Commission shall provide a  
8 report to the Congress not less than biennially indicating  
9 any regulatory obligations that it recommends be enacted  
10 on the offering or provision of a VoIP application, includ-  
11 ing nondiscriminatory treatment for processing or treat-  
12 ment of digital packets.

13 **SEC. 7. NO STATE OR LOCAL TAXATION OF VOIP APPLICA-**  
14 **TIONS.**

15 (a) IN GENERAL.—No State or political subdivision  
16 shall impose any tax, fee, surcharge, or other charge for  
17 the purpose of generating revenues for governmental pur-  
18 poses on the offering or provision of a VoIP application.

19 (b) EXEMPTION.—Subsection (a) shall not apply to  
20 a fee imposed for a specific privilege, service, or benefit  
21 conferred.

22 **SEC. 8. NO IMPACT ON TRANSMISSION FACILITIES.**

23 Nothing in this Act shall affect the authority of the  
24 Commission or any State commission to regulate the  
25 transmission facilities used to transmit a voice commu-



1 nication of a VoIP application. This section may not be  
2 construed to authorize the Commission or any State to  
3 regulate the offering or provision of a VoIP application  
4 by regulating such transmission facilities.

5 **SEC. 9. FTC AUTHORITY.**

6 (a) IN GENERAL.—Except as provided in subsection  
7 (b), nothing in this Act shall be constructed to affect the  
8 authority of the Federal Trade Commission to prevent un-  
9 fair or deceptive acts or practices.

10 (b) REGULATIONS EXCLUDED.—Subsection (a) does  
11 not authorize the Federal Trade Commission to issue any  
12 regulations to implement this Act.

13 **SEC. 10. DEFINITIONS.**

14 (a) IN GENERAL.—For purposes of this Act:

15 (1) COMMISSION.—The term “Commission”  
16 means the Federal Communications Commission.

17 (2) CONNECTED VOIP APPLICATION.—The term  
18 “connected VoIP application” means a VoIP appli-  
19 cation that is capable of receiving voice communica-  
20 tions from or sending voice communications to the  
21 public switched telephone network, or both.

22 (3) CUSTOMER.—The term “customer” includes  
23 a consumer of goods or services whether for a fee,  
24 in exchange for an explicit benefit, or provided for  
25 free.

1           (4) REGULATE.—The term “regulate” includes  
2       taking any governmental action that restricts, pro-  
3       hibits, limits, or burdens, or imposes any obstacle,  
4       obligation, or duty, or interferes with, an applica-  
5       tion.

6           (5) UNIVERSAL SERVICE.—The term “universal  
7       service” has the meaning given such term by section  
8       254(c) of such Act (47 U.S.C. 254(c)).

9           (6) VOICE-OVER-INTERNET-PROTOCOL APPLICATION;  
10       VOIP APPLICATION.—

11           (A) IN GENERAL.—The terms “Voice-over-  
12       Internet-protocol application” and “VoIP appli-  
13       cation” mean the use of software, hardware, or  
14       network equipment for real-time 2-way or  
15       multidirectional voice communications over the  
16       public Internet or a private network utilizing  
17       Internet protocol, or any successor protocol, in  
18       whole or part, to connect users notwith-  
19       standing—

20           (i) the underlying transmission tech-  
21       nology used to transmit the communica-  
22       tions;

23           (ii) whether the packetizing and  
24       depacketizing of the communications oc-

1                   curs at the customer premise or network  
2                   level; or

3                   (iii) the software, hardware, or net-  
4                   work equipment used to connect users.

5                   (B) EXCLUSION.—The term does not in-  
6                   clude an application that is used for voice com-  
7                   munications that both originate and terminate  
8                   on the public switched telephone network.

9                   (b) COMMON TERMINOLOGY.—Except as otherwise  
10                  provided in subsection (a), terms used in this Act shall  
11                  have the meaning provided under section 3 of the Commu-  
12                  nications Act of 1934.

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